

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Qwest's Petition for Waivers)	CSR-71852
of the Set-Top Box Integration Ban,)	CS Docket No. 97-80
47 C.F.R. § 76.1204(a)(1))	

**REPLY COMMENTS OF QWEST IN SUPPORT OF ITS
PETITION FOR WAIVERS OF THE SET-TOP BOX INTEGRATION BAN,
47 C.F.R. § 76.1204(a)(1)**

Qwest Communications International Inc. ("Qwest") files these reply comments in support of its petition for two waivers of the Federal Communications Commission's ("Commission") rule banning the distribution of integrated set-top boxes starting July 1, 2007.¹ Qwest seeks the waivers for the continued use of the set-top boxes for Qwest's very high-speed digital subscriber line ("VDSL")-based and fiber-to-the-home broadband passive optical network ("FTTH-BPON")-based delivery systems. Only two parties filed comments regarding Qwest's petition: Motorola, Inc. ("Motorola") filed in support of the waivers and the Consumer Electronics Association ("CEA") filed in opposition.

Contrary to CEA's assertions, and in accord with Motorola's support, the Commission should grant Qwest's petition because special circumstances and the public interest warrant it. CEA objects to granting Qwest's petition because (1) Qwest's intended migration to new delivery technologies is not a special circumstance warranting a waiver; (2) Qwest has had nine years to come into compliance with the ban; and (3) the goal of a competitive market for sale of

¹ See Qwest's Petition for Waivers of the Set-Top Box Intergration Ban, 47 C.F.R. § 76.1204(a)(1), dated Feb. 9, 2007, resubmitted Feb. 22, 2007 ("Qwest Petition"). *And see*, Pubic Notice, Special Relief and Show Cause Petitions, Report No. 0206, rel. Apr. 13, 2007.

navigational devices must trump the goal of a competitive market for delivery of video services.’ Each of CEA’s objections misses the mark and cannot legitimately support a denial of Qwest’s waivers. First, Qwest’s intended migration to new delivery technologies is only one of several special circumstances warranting the requested relief. Second, irrespective of the length of time the regulation has been in place, the technological and regulatory realities are such that there is currently no clear understanding of how the ban applies to set-top boxes that are used with digital subscriber line (“DSL”)-based video delivery system, and in turn, there are no VDSL-based set-top boxes that are recognized as ban-compliant. Third, denying Qwest’s requested waivers does not advance the ban’s goal of a competitive market for navigational devices, and granting the waiver does not harm that goal. Conversely, granting Qwest’s request advances the goal of Competition in the market for delivery of video services and denying the request harms that goal. Thus, on balance, the public interest is better served by granting the petition.

There are several special circumstances supporting Qwest’s requested waivers. Qwest is a small multichannel video programming distributor (“MVPD”). In total, Qwest has fewer than 50,000 wireline digital video customers. With respect to its VDSL-based system, which is Qwest’s predominant wireline digital video delivery system, Qwest is using a first-generation delivery technology that is very different from the technology used by the vast majority of MVPDs subject to the ban.

Additionally, Qwest plans to migrate to new delivery systems. The technology and the market are shifting such that Qwest cannot continue to use the proprietary VDSL-delivery system for much longer. **As** Motorola has acknowledged, it is no longer developing new features

² Comments of the CEA On Qwest Communications Petition for Waiver of Section 76.1204(a)(1), CS Docket No. 97-80, CSR-7185-Z, filed May 3, 2007.

for the set-top boxes for this product line.’ In accomplishing this migration. Qwest fully intends to use set-top boxes with those new delivery systems that are compliant with the letter and the spirit of the integration ban, if such boxes exist and enable a smart solution. But the focus of collaborative efforts in the industry to develop set-top boxes that are compliant with the ban has been on set-top boxes that are designed for use with a quadrature amplitude modulation (“QAM”)-based broadcast delivery structure over fiber and coaxial cable of traditional cable companies. Only recently has the industry engaged in collaborative efforts to develop standards enabling the interoperability of consumer electronic devices in the home with Internet protocol television (“IPTV”) networks that include DSL-based delivery infrastructure. Qwest has been participating in such efforts, including the Alliance for Telecommunications industry Solutions’ IPTV interoperability Forum and the CEA’s Technology and Standards IPTV Oversight and Coordination Committee.⁴ At this point, Qwest is not prepared to delineate a certain future with respect to the set-top boxes to be used in the new systems. In the interim, Qwest seeks continued use of the set-top boxes for its current delivery systems, so that it may continue to offer its video services to new customers.

A still further and critical special circumstance is that there are no VDSL-based set-top boxes that are CableCARD-ready or otherwise recognized as ban-compliant. The VDSL-based set-top boxes may well be compliant with the separation-of-conditional-access requirement of the ban, although perhaps not in compliance with the underlying intent of the ban to enable common reliance on navigational devices purchased by the consumer at retail. The fact remains that there is not a set-top box available that Qwest or any consumer can purchase that will both

³ Comments of Motorola, Inc., filed May 3, 2007 at 9 n.29.

⁴ See Qwest Petition at 14 n.37.

satisfy the common reliance goal underlying the integration ban and enable access to Qwest's VDSL-delivered video services.

Finally, the public interest is better served by granting Qwest's waivers. Where Qwest has deployed its switched digital video services, Qwest has brought much-needed wireline competition to those areas resulting in lower prices, improved customer service and more choices for consumers. If the Commission does not either grant Qwest a waiver for its VDSL-based set-top boxes or determine that a waiver is not necessary for Qwest's continued use of the boxes, then Qwest's further deployment of video services will effectively cease until it is able to migrate to an improved delivery platform. Thus there is a very real public benefit in granting Qwest's requested waivers -- promoting competition in the video delivery services market, which contrary to CEA's assertions is an important aspect of a stated statutory goal and has been recognized by this Commission as a primary goal of federal communications policy.⁵

CEA is adamant that the Commission deny Qwest's petition, and yet it does not demonstrate how denying Qwest's request furthers the purposes of the ban. Unlike the various avenues for compliance for traditional QAM-based systems that are being proffered, no one has proposed a compliance solution for the VDSL-based delivery system used by Qwest. Currently there is no Commission-endorsed compliance solution for Qwest's VDSL-based delivery system. Consequently, denial of Qwest's waiver does not achieve the purposes of the ban with respect to this VDSL technology. Instead, it would hamper indefinitely the competitive presence of a new

⁵ See 47 U.S.C. § 521, stating that one of the purposes of the Cable Act is to "promote competition in cable communications"; see also, *In the Matter of Implementation of Section 621(a)(1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992*, Notice of Proposed Rulemaking, 20 FCC Rcd 18581-82 ¶ 1 (2005) (stating that "greater competition in the market for the delivery of multichannel video programming is one of the primary goals of federal communications policy.").

entrant bringing innovative, new delivery platforms to the MVPD market. Until there is a Commission-approved compliance solution for VDSL-delivery technology, a waiver for VDSL-based set-top boxes is necessary to ensure that the Commission does not unfairly discriminate against, and thus hinder the development of, new technologies in enforcing the ban. Achieving a competitive market for navigation devices should not be at the expense of new video services delivery technologies.

For these reasons, and those stated in Qwest's petition, Qwest respectfully asks that the Commission grant the petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Richard Grozier, do hereby certify that I have caused the foregoing **REPLY**
COMMENTS OF QWEST IN SUPPORT OF ITS PETITION FOR WAIVERS OF THE
SET-TOP BOX INTEGRATION BAN, 47 C.F.R. § 76.1204(a)(1) to be 1) filed via ECFS in
CS Docket No. 97-80; 2) served via email on the FCC's duplicating contractor Best Copy and
Printing, Inc. at FCC@bcpiweb.com; and 3) served via First Class United States Mail, postage
prepaid. on the parties listed on the attached service list.

/s/ Richard Grozier
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